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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,697	06/22/2006	Abdalla Magd Ahmed Kotb	207,650	7992
7590 05/08/2009				
Jay S Cinamon Abelman Frayne and Schwab 666 Third Avenue New York, NY 10017-5621			EXAMINER PAK, JOHN D	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 05/08/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,697

Applicant(s)

MAGD AHMED KOTB, ABDALLA

Examiner

John Pak

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Claims 1-6 are pending in this application.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5 are assertions of legal rights, not description of an invention. This is not what a "claim" is in U.S. practice. Applicant's claims 1-5 constitute non-statutory subject matter.

Claim 6 claims "the right for manufacturing, processing sulfur in its elemental form or in acid salts, combined and / or formulated with R as a medical product in all forms as medicine, medical foods, artificial milks and all medicaments."

There are two problems with claim 6 under 35 U.S.C. 101. First, only one category of invention is permitted in one claim. So a claim must be directed to only one of the following: a process; a machine; an article of manufacture; or a composition of matter. Second, a claim should just set forth the invention, not recite "I claim the right for"

For these reasons, claims 1-6 are directed to non-statutory subject matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) Claim 6 has more than one period. A claim must have only one period.

(2) Definition of R is confusing because it is not one variable but multiple variables. "R degree" cannot be understood. "R is ----O" cannot be understood.

(3) What is "acid salts derivatives?" What qualifies it as a derivative and what type of derivation is too much and takes it outside the scope of the claim?

(4) "the sulfate" lacks antecedent basis.

(5) It cannot be understood what is being claimed. Is claim 6 limited to a process or is it also directed to a composition such as a medicine?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Boyce et al. (US 5,716,606).

Boyce et al. explicitly disclose combining flowers of sulfur (i.e. elemental sulfur) in a spreadable base such as Lubriderm lotion (column 1, line 35 to column 2, line 15). Topical application for treating skin disorders is disclosed (column 2, lines 28-36). See also claims 1-11.

Applicant's claim 6, to the extent that it can be understood to claim a processing of sulfur to produce a composition of sulfur in elemental form in the form of a medicine, is clearly anticipated by Boyce et al. Since R includes "all compounds able to form final formulation releasing elemental sulfur," wherein such compounds are readable on any medicinal carrier for elemental sulfur, Boyce's Lubriderm lotion meets applicant's claim feature.

For these reasons, all claims must be rejected. No claim is allowed.

Applicant is advised of the following. In the event that the claims are substantially amended to specifically and separately recite various features that appear to be embodied in the claims, the claims may be subject to determination of lack of unity of invention. This determination would depend on the manner by which the claims are amended, so no further comment on this potential issue is in order at this time.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Pak/
Primary Examiner, Art Unit 1616